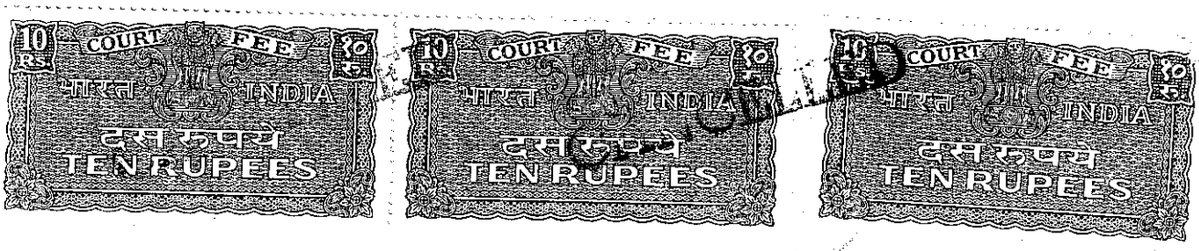


(3)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR.

W.P. No. 629/2001.

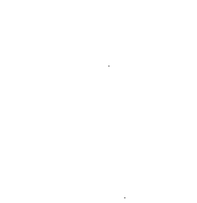
Petitioner : Laxman Prasad
S/o Late Durjan, aged 45 years,
R/o Village - Sirsa-Jeora
Teh. & Distt. DURG (C.G.).

Versus.

Respondents : 1. Managing Director
SAIL, Bhilai Steel Plant,
Bhilai.

2. Industrial Tribunal,
RAIPUR.

3. Labour Court,
DURG.



Writ petition under Article 226/227 of the Constitution of India.

(84)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION No. 679 of 2001

Laxman Prasad

-Versus-

Managing Director, SAIL & others

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE THE CHIEF JUSTICE

I agree

Sd/-
Chief Justice

POST FOR JUDGMENT ON 22nd June, 2003

J U D G E

2nd July, 2003

(85)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION No. 679 of 2001

Laxman Prasad

-Versus-

Managing Director, SAIL & others

Petitioner by Shri N.L.Shrivastava

Respondent No.1 by Shri P. Diwakar

Division Bench: **Hon'ble Shri K.H.N. Kuranga, C.J.**
and Hon'ble Shri L.C. Bhadoo, J.

O R D E R

(Delivered on 31st July, 2003)

The following order of the Court was delivered by *Justice L.C.Bhadoo*:

1. By this writ petition under Article 226/227 of the Constitution of India the petitioner has challenged the order dated 20th January, 2001 passed by the Industrial Court, Madhya Pradesh Bench, Raipur in Civil Appeal No. 218/MPIR Act/A-II/2000 by which learned Industrial Court has affirmed the order dated 25th August, 2000 passed by the learned Labour Court, Durg in Case No. 49/MPIR/95.

2. The brief facts leading to filing of this petition by the petitioner Laxman Prasad are that the petitioner was appointed on the post of Khalasi in Bhilai Steel Plant but vide order dated 17.4.1979 the respondent/company had terminated his services on the ground that he had produced a false certificate to the effect that he had worked for 240 days in Bhilai Steel plant. Aggrieved by the order of termination the petitioner raised a dispute before the Labour Court, Durg by filing an application under section 31 of the Madhya Pradesh

Industrial Relations Act which was registered as Case No. 61/M.P.I.R./79. Learned Labour Court vide order dated 16.1.1982 rejected the same.

3. Feeling aggrieved by the order passed by the learned Labour Court the petitioner filed the appeal No.20/MPIR/82 before the Industrial Court, Madhya Pradesh, Indore which was dismissed vide Judgment dt. 7.6.1983 to the effect that "for the reason given in the judgment passed today in Appeal No.22/MPIR/82, this appeal is dismissed with the recommendations made therein". In Appeal No. 22/MPIR/82 learned Industrial Court while maintaining the order passed by the learned Labour Court, in the last para of the judgment observed that " looking to the circumstances of this case viz. that the appellant is illiterate and he has taken an wrong action with a view to over come starvation on account of his unemployment, I would recommend to the company to reconsider his case as the company has done in the cases of other employees and substitute a lenient punishment. However, if the company considers to take a lenient view, the appellant shall not be entitled to any back wages."

4. Feeling aggrieved by the said judgment dt. 7.6.1983 the petitioner along with two others namely Jiwrakhan Lal Yadav and Nand Kumar Yadav filed a writ petition under Article 226/227 of the Constitution of India which was registered as M.P.No. 2792 of 1983 and the same was dismissed by the Division Bench vide order dt.28.2.1991. A bare perusal of paragraph-4 of the order dt. 28.2.1991 reveals that the petitioner after loosing the case on merit made a request that he be given similar treatment as has been given to the other

employees who were also dismissed from service on the similar count but later on their penalty was reduced to reduction in salary therefore the petitioner should also be given the same treatment and as the company is not giving that treatment it is violative of Article 14 of the Constitution of India. The High Court after considering all the aspects of the cases of the similarly situated employees which were cited by the petitioner dismissed the petition with the observation that the petitioners are not able to make out a discrimination and that "if the employer inflicts certain punishment to one and a little different punishment to the other, it will be very difficult to say that the one receiving severe punishment has been discriminated in that regard and would, therefore be entitled to protection under Article 14 of the Constitution. The employer must be invested with some discretion in this regard and the punishment awarded in each case must, therefore, be examined in the light of attending circumstances. That being so, we hold that the petitioners are no right in contending that there has been discrimination and they have been dealt with rather harshly in the matter of award of punishment.

5. From the perusal of the record it reveals that the petitioner also tried to support his case on the ground that he also got employment on the ground that his land was acquired for setting up of the Bhilai Steel Plant as such he was entitled for appointment in Bhilai Steel Plant but later on he abandoned that claim and in the enquiry it was found that the certificate produced by the petitioner regarding his previous employment was found to be fake and therefore the Competent Authority held that since he has obtained the employment based on a

fake certificate by committing a fraud on the company ultimately his services were terminated vide order dt. 17.4.1979.

6. After loosing up to the High Court it appears that in the year 1995 the petitioner again moved to the Labour Court by filing Case No. 49/MPIR/95 alleging that the Managing Director Bhilai Steel Plant has committed contempt of Court by not acting upon the recommendations made in the order dt. 7.6.1983 passed by the Industrial Court. Learned Labour Court rejected the said case vide order dt. 25.8.2000 holding that the recommendation made in the order dt. 7.6.1983 was an observation of the learned Industrial Court and as the same has been merged in the order dt. 28.2.1991 passed by the High Court in M.P.No.2792/1983 and that the application was time barred.

7. Aggrieved by the above order the petitioner filed Civil Appeal No. 218/MPIR Act/A-II/2000 before the Industrial Court which has been rejected vide order dt. 20th January, 2001 holding that the petitioner's appeal is hopelessly belated and time barred, the petitioner moved after 11 years and that the appeal of the appellant was dismissed by the Industrial Court and only recommendation was made to take a lenient view.

8. Now by this writ petition the petitioner has again challenged these two orders of the learned Labour Court and learned Industrial Court and prayed that since the petitioner moved the respondent/company for considering his representation with the prayer to comply with the direction of the Industrial Tribunal dt. 2.8.1983 and since no decision was taken by the respondent/Company for a long time, the petitioner was

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move to the learned Labour Court, therefore there is no delay in filing the petition.

9. In the first instance the petitioner was removed from service in 1979 and since then 24 years have elapsed and now this writ petition has been filed in which the contention of the petitioner is that other employees who were found in same type of misconduct were dealt with leniency and they were let off by imposing a penalty of reduction in salary, therefore, the petitioner ought to have also been dealt with, in the same manner.

10. As mentioned above this point has already been considered by the learned Labour Court, learned Industrial Court and the High Court and all the three courts have reached to the conclusion that the petitioner has not been able to show any discrimination in the matter of awarding punishment and now it is settled law that the High Court or any Tribunal is not entitled to interfere with the punishment part of the discretion of the Competent Authority and the High Court cannot sit as appellate Court in directing the respondents for reduction in salary, even it has been held by the Hon'ble Apex Court that the High Court is not required to go into the details of the enquiry and conclusion thereof if it has been conducted in a prescribed manner.

11. In view of the above we are of the considered opinion that this writ petition is wholly misconceived. it has no merit and the same is liable to be and is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge